

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EDWARD J. NICHOLAS,

Plaintiff,

v.

JOHN F. CHERRY, et al.,

Defendants.

Civil Action No. 06-198 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on September 6, 2006 and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's Report and Recommendation [Doc. No. 29], filed on January 16, 2008, recommends that the within action be dismissed as legally frivolous in accordance with 28 U.S.C. § 1915(e). Plaintiff was allowed ten (10) days from the date of service in which to file objections. The Report and Recommendation was served on Plaintiff in accordance with Fed. R. Civ. P. 5(b)(2)(B) by sending a copy via certified mail to the Plaintiff's last address of record. No objections were filed. During a telephonic conference held on February 20, 2008, this Court received information from the Pennsylvania Board of Probation and Parole that Plaintiff is considered to be an absconder with no presently valid address. Accordingly, a copy of this Memorandum Order will be left for Plaintiff with the clerk of the court in accordance with Fed. R. Civ. P. 5(b)(2)(C).

AND NOW, this 21st day of February, 2008, after de novo review of the motion and documents in the case, together with the Report and Recommendation,

IT IS HEREBY ORDERED that the within action be, and hereby is, DISMISSED as legally frivolous in accordance with 28 U.S.C. § 1915(e).

The Report and Recommendation [Doc. No. 29] of Chief Magistrate Judge Baxter, filed on January 16, 2008, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, Chief U.S. Magistrate Judge